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August 31, 2006

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2006-4 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Monday, October 2, 2006**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, they will be printed in Volume 3 of the Property Taxes Law Guide. At that time, the CLD becomes obsolete.

This CLD is posted on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). Copies of the backup correspondence are linked to each annotation via the annotation number. If this link does not work, please let us know by using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2006-4

August 31, 2006

### 105.0000 AIRCRAFT OF HISTORICAL SIGNIFICANCE

105.0051 **Late Filing.** Pursuant to Revenue and Taxation Code sections 255 and 254, the affidavit for claiming the exemption must be filed annually with the assessor between the lien date and February 15. The only provision for late filing is in section 276.5, which provides that a person filing an affidavit after February 15 but on or before August 1 of the assessment year is eligible for 80 percent of the full reduction. This provision is effective only for 2004 and later years. If an affidavit was not timely filed for years prior to 2004, the exemption is deemed waived under section 6 of article XIII of the California Constitution. C 3/15/2006.

### 220.0000 CHANGE IN OWNERSHIP

220.0197 **Estate for Years.** The creation of an estate for years giving Beneficiary X (who is not a spouse or a registered domestic partner, or otherwise eligible for an exclusion) the right to use and occupy the transferor's residence for a period of 34 years is not a change in ownership under Property Tax Rule 462.060(b) since the term is less than 35 years. The termination of the estate for years and the vesting of ownership in someone other than the transferor or the transferor's spouse is a change in ownership, absent an applicable exclusion. If the ownership vests in the children of the transferor, then the parent-child exclusion may be available if a claim is filed. C 3/15/2006.

~~220.0373 **Life Estate.** The creation or transfer of a life estate constitutes a change in ownership unless otherwise excluded by a specific statute or property tax regulation. When, however, a life estate is relinquished to the owner of the remainder interest in a property, it ceases to exist and is merged into what was the remainder interest. The remainder interest, which was a contingent interest, becomes a vested, present interest received from the creator of the interest, not the life tenant, and is subject to appraisal at its full fee value.~~

~~A life estate deeded by a life tenant to anyone other than the creator of the interest or that person's spouse or the owner of the remainder interest continues to exist as a present property interest, and its transfer results in a change of ownership subject to reappraisal. C 9/26/90.~~

*This annotation is being deleted because the conclusion is inconsistent with the conclusion in Annotation 220.0372. Where the life tenant transfers the life estate prior to it terminating naturally upon death, the interest conveyed is the life estate and not the remainder. For this reason, the life tenant, not the grantor, is the transferor for change in ownership purposes.*

220.0394 **Limited Partnership.** A transfer of real property to a limited partnership in exchange for a separate class of partnership interests may be excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) if the partner owns the same percentage of capital and profits in each piece of real property through the class of partnership interest in the limited partnership as the partner owned in its respective property prior to the transfer. C 3/1/2006.

220.0511 **Partnership.** The exclusion under Revenue and Taxation Code section 62(a)(2) applies to a proportional transfer of real property from a partnership to its partners even though the partners as individuals do not hold title to the partnership property pursuant to Corporations Code sections 16501, 16502, 16201, and 16203. C 3/1/2006.

220.0512 **Partnership.** Revenue and Taxation Code section 62(a)(2) provides an exclusion from change in ownership if the ownership interest transferred between a legal entity and an individual remains the same before and after the transaction. If an individual transfers a 25.85 percent interest in real property to a partnership in exchange for a 40 percent interest in capital and profits, this will result in a change in ownership of the interest transferred because the ownership interests are not proportional. Even though the value of the real property may be equal to the value of the partnership interest, the comparison standard is ownership interests. C 3/13/2006.

220.0673 **Step Transaction.** A partnership conveyed multiple parcels of land to its two former partners as individuals so that one person took sole title to some parcels while the other took sole title to the remaining parcels. Because these transfers were not proportional, the assessor reassessed all the parcels. Upon discovering the reassessments, the former partners rescinded those transfers by reconveying the parcels of land back to the partnership. Acknowledging the rescission, the county assessor returned those parcels of land to their original base year values.

Thereafter, the partnership conveyed the parcels proportionally to the former partners as tenants in common, with each partner obtaining an interest in each parcel equal to his or her share of the partnership capital and profits. Subsequently, the former partners transferred real property interests to each other so that each was the sole owner of certain parcels.

The step transaction doctrine may be applied when unnecessary steps are taken merely to circumvent the intent of the change in ownership statutes. Since the facts indicate that the end result contemplated by the former partners was that one partner would obtain sole ownership of some of the parcels while the other partner would obtain sole ownership to the remaining parcels, then the step transaction should be applied because the partners had the same related purpose and intent since the beginning of these transactions. C 3/1/2006.

220.0674 **Step Transaction.** Two separate family trusts, S Trust and J Trust, are each 50 percent partners in a partnership which owns real property. Upon the death of one of the trustees, S Trust's interest in the partnership was transferred to two trusts: Trust A and Trust B. The surviving spouse is the trustee and beneficiary of both trusts. Subsequently, the partnership was required to convey the property out of the partnership to obtain financing. The real property was transferred to the J Trust and Trusts A and B as tenants in common in the same proportional interests. Now Trusts A and B are considering purchasing the interest owned by the J Trust.

The step transaction doctrine allows an assessor to disregard for tax purposes a series of steps utilized to effect the transfer of real property when the facts suggest that the transfer might have been accomplished in fewer steps and that the purpose for using a series of steps was to avoid a change in ownership. If the facts indicate that the transfer out of the partnership was motivated solely by the lender's requirement for the purpose of obtaining a loan against the property and not some other reason, then the step transaction should not be applied. C 3/9/2006.

**585.0000 MANUFACTURED HOMES**

585.0090 **Voluntary Conversion.** An owner of a pre-July 1, 1980, manufactured home that is subject to the vehicle license fee may choose to voluntarily transfer the manufactured home to the property tax roll. In order to convert a manufactured home to property taxation, an owner must give notice to the county assessor pursuant to Revenue and Taxation Code section 5801(a) in addition to recording the form that gives notice of the conversion to the Department of Housing and Community Development. The conversion from the vehicle license fee to the local property tax roll is not subject to supplemental assessment because there is no change in ownership or new construction. C 3/13/2006.

**625.0000 PARENT-CHILD TRANSFERS**

625.0083 **Domestic Partner.** Family Code section 297.5 provides that registered domestic partners have the same rights, protections, and benefits as are granted to spouses. Because "child" is statutorily defined in Revenue and Taxation Code section 63.1(c) and is not defined by the California Constitution, a child's registered domestic partner is accorded the same treatment as a son-in-law or daughter-in-law under section 63.1(c)(3)(C). Thus, a transfer of real property from a parent to his daughter and her registered domestic partner is eligible for the parent-child exclusion under Revenue and Taxation Code section 63.1. C 3/15/2006.

625.0084 **Estate for Years.** The creation of an estate for years giving Beneficiary X (who is not a spouse or a registered domestic partner, or otherwise eligible for an exclusion) the right to use and occupy the transferor's residence for a period of 34 years is not a change in ownership under Property Tax Rule 462.060(b) since the term is less than 35 years. The termination of the estate for years and the vesting of ownership in someone other than the transferor or the transferor's spouse is a change in ownership, absent an applicable exclusion. If the ownership vests in the children of the transferor, then the parent-child exclusion may be available if a claim is filed. C 3/15/2006.

625.0145 **One Million Dollar Exclusion.** Wife dies and her interest in certain properties is transferred to an irrevocable trust. The trust provides for her husband to receive benefits for life, and their children hold the remainder interests. Upon the husband's death, the wife is deemed the grantor of the remainder estate. Since the wife is considered an eligible transferor of the property, her \$1 million exclusion is available when the irrevocable trust terminates. C 3/29/2006.

**880.0000(a) WELFARE EXEMPTION – IN GENERAL**

880.0267 **Recorded Regulatory Agreement.** For purposes of Revenue and Taxation Code section 214(g)(1)(A), properties which have received low-income housing tax credits, whether federal or state, are eligible for exemption for the duration of the regulatory agreement that restricts the property's use for rental to lower income households. Assuming that the terms of the regulatory agreement are consistent with section 214(g) and that the property continues to be used in compliance with those terms, the exemption should apply to the percentage of units used for rental to lower income households as long as the regulatory agreement is in effect, regardless of whether the property continues to receive the credits. Thus, property which received federal low-income housing tax credits for a 15-year period that has expired may continue to receive the exemption if the property is subject

to a regulatory agreement that restricts the use of the property for rental to lower income households. C 3/2/2006.

**880.0350(b) WELFARE EXEMPTION – CHARITABLE**

880.0565 **Transportation Service.** By contract to the local government, a claimant operates a discounted fare transportation program for senior citizens and disabled persons of the community. The operation of a fee-paid transportation service is a governmental, not charitable, activity. Even if the service was not provided solely by the government, the claimant is not entitled to an exemption because there is no charitable aspect to the claimant's role in providing the service as it is reimbursed for its costs, and the service is a commercial activity or equivalent thereof. C 3/6/2006.